IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2007

CORAM

THE HON'BLE MR.JUSTICE P.K.MISRA
and
THE HON'BLE MR.JUSTICE K.MOHAN RAM

Civil Revision Petition No.1701 of 1996
and C.M.P.No.9346 of 1996

R.Sowrirajan ... Petitioner (respondent/Appellant)

-Vs.-

1.T.Kala
2.T.Ravichandran (Minor)
3.T.Sivasankari (Minor)
4.Sardambal (died)
(R-1 to R-3 recorded as L.R.s of the deceased R-4 vide order dated 22.09.2000 in memo filed by the counsel for the petitioner on 18.09.2000)
(R-2 and R-3 Minors, Represented by mother and guardian, R-1) .. Respondents (Petitioners/Respondents)

Prayer :- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/60 as amended by Act 23/73 and Act 1 of 1980 against the order and decree dated 10.03.1994 in R.C.A.No.1061 of 1992 on the file of the IV Judge, Court of Small Causes, Madras, confirming the order and decree dated 31.03.1992 in R.C.O.P.No.3488 of 1989 on the file of the 12th Judge, Court of Small Causes.

For Petitioner : Mr. P.Seshadri.
For Respondents : Mr. R.Subramanian, for R-1 to R-3.

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O R D E R

(Order of the court was made by Justice K.Mohan Ram)

The above revision has been filed by the tenant under Section 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 (hereinafter referred to as "the Act") challenging the order of Rent Control Appellate Authority confirming the order of Rent Controller fixing a fair rent of Rs.7,146/- to the petitioner's premises under Section 4 of the Act.

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2. The brief facts that are necessary for the disposal of the above Revision are set-out below:-

The building in respect of which fair rent has been fixed is located at Door No.36, Vathiyar Subbaraya Mudali Street, Saidapet, Chennai - 15. A school which is said to be in existence from 1929 is being run there. The landlord initiated Eviction Proceedings and the said Eviction Proceedings attained finality by the disposal of the Special Leave Petition filed by the tenant before the Apex Court. But in the meantime, land acquisition proceedings were initiated under the Land Acquisition Act, 1894. The Landlord challenged the land acquisition proceedings by filing a writ petition before the High Court and the said writ petition was allowed. The tenant filed a writ appeal against the writ petition, but the same was dismissed and as against that, the tenant preferred a Special Leave Petition before the Apex Court. The Apex Court, by an order dated 02.09.1996, granted stay of dispossession of the tenant. When the Special Leave Petition was pending before the Apex Court, the petition for fixing fair rent was filed.

3. The main contention of the tenant before the Rent Controller was that in view of the pendency of the Special Leave Petition relating to the land acquisition proceedings, the rights of the parties have been absolutely frozen and the landlords cannot have any right, title or interest for seeking fixation of fair rent under the Act.

4. Before the Rent Controller, on the side of the landlords two witnesses were examined and four documents were marked as Exs.P-1 to P-4 and on the side of the tenant, two witnesses were examined and six documents were marked as Exs.R-1 to R-6. On a consideration of the evidence on record, the Rent Controller fixed the market value of the land, in which the building stands, at Rs.5,00,000/- per ground. The Rent Controller has also separately valued the other amenities and ultimately fixed the value of the petitioner's premises at Rs.7,14,601/- and arrived at the fair rent at Rs.7,146/-. Being aggrieved by that, the tenant preferred R.C.A.No.3488 of 1989 before the Rent Control Appellate Authority.

5. Before the Rent Control Appellate Authority, the main contention put forth by the tenant was that the petition for fixing of fair rent itself is not maintainable, in view of the pendency of a Special Leave Petition before the Supreme Court with regard to the land acquisition proceedings and the market value arrived at by the rent controller at Rs.5,00,000/- per ground on the basis of Ex.P-3 sale deed is incorrect. The Appellate Authority held that the RCOP is maintainable and accepted the contention of the tenant regarding valuation of the land and further held that the value of Rs.4,90,500/- arrived at by the Engineer-P.W.1, who was examined on the side of the landlord under Ex.P-4, is erroneous. But however, the Appellate Authority finally held that in the year 1987, the value of land per ground would be Rs.4,00,000/- and as the RCOP was filed in 1989, the Appellate Authority taking into account the rise in cost of the land in Madras allowed an increase of 12% per year and accordingly fixed the market value of the land at Rs.5,00,000/- per ground. The Appellate Authority has observed that the Rent Controller has rightly adopted the PWD rates for fixing the value of the building and has also

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observed that no other contentions questioning the correctness of the Rent Controller's order were put forth. Being aggrieved by the order passed by the Rent Control Appellate Authority, the above Revision has been filed as aforesaid.

6. The only contention of the tenant/petitioner is that when the Hon 'ble Supreme Court itself had stayed the dispossession of the petitioner herein in view of the land acquisition proceedings, the logical results which flows is that land acquisition proceedings has changed the nature of relationship between the parties and consequent upon the declaration made under Section 6 and subsequent direction under Section 7 any proceedings under the Rent Control Act cannot be initiated or be proceeded with atleast until the finalisation of the land acquisition proceedings and the outcome of the proceedings in the Hon 'ble Supreme Court. In other words, the contention of the tenant/petitioner is that the respondents-landlords cannot claim any right or title or interest or elevated themselves to the position of the landlords subsequent to the declaration made under Section 6 and direction issued under Section 7 of the Land Acquisition Act and their only remedy is to get compensation under the Land Acquisition Act. Learned counsel further submitted that, since the Apex Court has now upheld the Land Acquisition proceedings, the petition for fixation of fair rent is not maintainable.

7. Per contra, Mr. R.Subramanian, learned counsel for Respondents 1 to 3 submitted that the mere pendency of the Special Leave Petition before the Hon'ble Supreme Court would not stand in the way of the Rent Controller in entertaining the petition filed under Section 4 of the Act and he further submitted the authorities below have rightly entertained the petition and there is absolutely no infirmity in the order of the authorities below. He further submitted that the upholding of the validity of the land acquisition proceedings by the Apex Court will not change the legal position, as according to the learned counsel, till the property acquired vests in the Government, the right and title to the property continues to vest with the landlord (owner of the property) and till such time, the landlord and tenant relationship continues and the tenant is liable to pay the rent for the tenanted premises.

8. We have carefully considered the submissions made on either side. The legal contentions put forth by the tenant/petitioner, in our considered view, does not merit acceptance.

9. For deciding the above legal contentions, it is necessary to consider as to when the property acquired under the Land Acquisition Act vests in the Government. The Government in exercise of power of Eminent Domain acquired the land under the provisions of the Land Acquisition Act. Section 16 of the Central Act empowers the Collector to take possession of the land in respect of which award is passed under Section 11 of the Act. Once possession is taken, the land shall vests in the Government free from all encumbrances. While considering a similar question, a Division Bench of this Court, in the decision rendered in the case of R.Shanmugam Vs. The State of Tamil and Others and reported in 2006 (4) C.T.C. 290 in paragraph 15 of the judgment has laid down as follows:-

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> "15. With the above understanding of the word "vesting", let us now consider the word "vest" used in Section 16 of the Tamil Nadu Amendment Act.
>
> > Power to take possession: When the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances"
>
> The word "vest" used in Section 16 must include vesting of land in Government, not only in regard to title but also possession. It is well accepted principle of interpretation that if the plan languageof the provision is clear and unambiguous, it would be only proper for the Courts to interpret and give plain grammatical meaning to such provision. In our opinion, the word "vest" used in Section 16 means and includes not only conferring mere right to possess the land acquired by the Government but also confer title on it. This is more so in view of the specific provisions of Section 16 of the Central Act, which provides that once possession of the land is taken by the Collector, the same shall absolutely vest in the Government free from all encumbrances".

10. The above extracted portion of the said decision effectively answers the contentions put forth by the learned counsel for the petitioner/tenant. As held by the Division Bench the word "vest" used in Section 16 of the Land Acquisition Act means and includes not only conferring mere right to possess the land acquired by the Government but also confer title on it. Therefore, once possession of the land is taken by the Collector under the Land Acquisition Act, the same shall absolutely vest in the Government free from all encumbrances. It is the admitted case of the parties herein that though award had been passed on 12.06.1997, possession has not been taken by the Collector and therefore, unless and until, possession is taken under the Land Acquisition Act, the property acquired does not vest in the Government and consequently the right and title to the property acquired, namely the property in respect of which fair rent is sought to be fixed, continues to vest with the landlords/respondents herein. Therefore, the contention of the learned counsel for the petitioner/tenant that the respondents herein cannot claim any right, title or interest or elevate themselves to the position of landlords subsequent to the declaration made under Section 6 of the Land Acquisition Act is liable to be rejected. Therefore, the petition filed under Section 4 of the Act is maintainable and the authorities below have rightly entertained the petition. It is made clear that the tenant/petitioner is liable to pay the fair rent fixed for the premises till possession is taken by the Collector by exercise of the powers conferred on him under Section 16 of the Land Acquisition Act.

11. A perusal of the order of the authorities below also shows that the correct principles to be applied under Section 4 of the Act have been applied to the facts of the case and infact the learned counsel for the tenant/petitioner is unable to point out any infirmity in the reasonings of the Authorities below. We find no reason to interfere with the findings recorded by the authorities below.

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12. In the result, the above Civil Revision Petition fails and the same is dismissed. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

srk

To

The Registrar,
Court of Small Causes, Chennai.

2 cc To Mr.P.Seshadri, Advocate, SR.19978, 19702.

C.R.P. No.1701 of 1996 and
C.M.P.No.9346 of 1996

MM(CO)
RVL 04.04.2007

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